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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			EXAMINER STRIMBU, GREGORY J	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 07/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/811,154	<b>Applicant(s)</b> PETTA ET AL.	
	<b>Examiner</b> Gregory J. Strimbu	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/24/05, 4/21/05, 5/16/07+</u> . | 6) <input type="checkbox"/> Other: _____  |

### ***Election/Restrictions***

Applicant's election with traverse of Group III in the reply filed on November 14, 2006 is acknowledged. The traversal is on the ground(s) that the lowering of the sash frame 114 can be a step in the process for removal of the sash of the species of Group III. This is not found persuasive because the lowering of the sash is not required for removal of the sash in the invention of Group III as discloses.

The requirement is still deemed proper and is therefore made FINAL.

Due to the cancellation of claims 18-20, no claims are withdrawn at this time.

### ***Information Disclosure Statement***

The information disclosure statement filed March 24, 2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information regarding CA 0818193 referred to therein has not been considered. Although the applicant has provided a bibliographic data sheet from the Canadian Patent Office on line data base, the applicant still must provide a copy of the entire document before it can be considered by the examiner.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

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obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 11 of copending Application No. 11/229,839 in view of Davies. Claim 11 of copending Application No. 11/229,839 is silent, concerning, *inter alia*, upper and lower sash frame members and a pair of opposed side frame members.

However, Davies discloses a frame assembly for a window or patio door, the frame assembly comprising: a) an integrally molded unitary master frame 10 including upper and lower horizontal master frame members 15 and 16, and opposed first and second vertical jamb members 13 and 14 extending between the upper and lower horizontal master frame members; and b) an integrally molded unitary sash frame 12 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 46 and 47, and a pair of opposed side members 11 and 45 extending vertically between the upper and lower horizontal sash frame members, a

mullion 33 having glazing support details 39, screen support details 63, projections 23 and channels 54, 44, 56, a first sash frame interlacing configuration 78, a first cavity (not numbered, but shown in figure 2 above the sliding sash frame 12 where the reference character 77 is located) which traverses the mullion as shown in figure 6, a shoulder defined by the cut 78B as shown in figure 6, a second sash frame interlacing configuration 23 as shown in figure 2, a glider element 74.

It would have been obvious to one of ordinary skill in the art to provide claim 11 of copending Application No. 11/229,839 with a sash frame having lower sash frame members and a pair of opposed side frame members, a mullion, a sash frame interlacing configurations, and glider elements, as taught by Davies, to enable the sash frame to hold a pane of glass, to improve the strength of the master frame, to enable a user to remove the sash frame, and to enable the sash frame to slide easily between opened and closed position, respectively.

This is a provisional obviousness-type double patenting rejection.

### ***Claim Rejections - 35 USC § 112***

Claims 1-17 and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "sash frame" on line 7 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. The applicant appears to be claiming the subcombination of a frame for a window or door, however,

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the recitation of the sash frame implies that the applicant is claiming a window or door, i.e., a frame and a sash. It is suggested the applicant change the preamble of the claims, where appropriate, to --A frame assembly, the frame assembly comprising:-- to overcome the above 35 USC 112 rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Davies.

Davies discloses a frame assembly for a window or patio door, the frame assembly comprising: a) an integrally molded unitary master frame 10 including upper and lower horizontal master frame members 15 and 16, and opposed first and second vertical jamb members 13 and 14 extending between the upper and lower horizontal master frame members; and b) an integrally molded unitary sash frame 12 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 46 and 47, and a pair of opposed side members 44 and 45 extending vertically between the upper and lower horizontal sash frame members, a mullion 33 having glazing support details 39, screen support details 63, projections 23 and channels 54, 55, 56, a first sash frame interlacing configuration 78, a first cavity (not numbered, but shown in figure 2 above the sliding sash frame 12 where the reference

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character 77 is located) which traverses the mullion as shown in figure 6, a shoulder defined by the cut 78B as shown in figure 6, a second sash frame interlacing configuration (not numbered, but shown at the bottom of the sash 12 in figure 2), a glider element 74.

Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Publication 2002-227551. Japanese Patent Publication 2002-227551 discloses a frame assembly for a window or patio door, the frame assembly adapted to be installed in a wall generally separating an exterior environment and an interior environment, the frame assembly comprising: a) an integrally molded unitary master frame including upper and lower horizontal master frame members 10 and 40, and opposed first 20 and second 30 vertical jamb members extending between the upper and lower horizontal master frame members; b) an integrally molded unitary sash frame 50 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 51 and 55, and a pair of opposed side members 52 and 53 extending vertically between the upper and lower horizontal sash frame members, the sash frame being slidable between open and closed positions within the master frame; and c) seat support elements 13a integrally molded with the master frame for securing seals 14a to the master frame, the seals adapted to engage the sash frame for inhibiting penetration of fluid from the exterior environment to the interior environment when the sash frame is in the closed position.

Claims 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Publication 2002-227551. Japanese Patent Publication 2002-227551 discloses a frame assembly for a window or patio door, the frame assembly adapted to be installed in a wall generally separating an exterior environment and an interior environment, the frame assembly comprising: (a) an integrally molded unitary master frame including upper and lower horizontal master frame members 10 and 40, and opposed first 20 and second 30 vertical jamb members extending between the upper and lower horizontal master frame members; b) an integrally molded unitary sash frame 50 slidably mounted within the master frame and movable between open and closed positions, the sash frame including upper and lower horizontal sash frame members 51 and 55, and a pair of opposed side members 52 and 53 extending vertically between the upper and lower horizontal sash frame members; (c) at least one fluid penetration flow path (not numbered, but shown between the rail 53 and the mullion 63 as shown in figures 2 and 6) extending between the external and internal environments through the frame assembly when the sash frame is in the closed position; and (d) a weather buffering mechanism provided in the at least one fluid penetration flow path and adapted to inhibit the penetration of fluid from the exterior environment to the interior environment along the fluid penetration flow path, the weather buffering mechanism including a weather buffering chamber (not numbered, but shown in figure 6 between the rail 53 and the mullion 63) disposed in the at least one fluid penetration flow path and extending between an exterior seal (not numbered, but shown on the right hand side of figure 6 as the angled surfaces of the rail 53 and the mullion) disposed upstream



of the buffering chamber and an interior seal 66 disposed downstream of the buffering chamber, an exterior drain 15, wherein the weather buffering mechanism further comprises an air reservoir (not numbered, but shown in figure 5 as the volume of air defined by the U-shaped portion of the mullion 63) substantially separated from the buffering chamber by a cover member 71, the cover member comprising apertures (not numbered, but shown in figure 6 between each element 71 of the cover member 71) therethrough, the air reservoir in fluid communication with the buffering chamber through the apertures to provide a source of generally dry air to be drawn into the buffering chamber.

### ***Response to Arguments***

Applicant's arguments filed May 16, 2007 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning Davies and Japanese Patent Publication 2002-227551 failing to disclose an "integrally moulded unitary" frame structure, the examiner respectfully disagrees. The claim limitation "integrally moulded unitary" requires no more than a unitary frame structure since the phrase "integrally moulded" is a product-by-process limitation. Therefore, Davies and Japanese Patent Publication 2002-227551 anticipate the claimed invention since they both disclose unitary frame structure, i.e., a frame structure that is one piece.

With respect to the applicant's comments concerning Davies failing to disclose screen support details, the examiner respectfully disagrees. The element 63 of Davies

is clearly capable of supporting a screen and therefore comprises screen support details. It should be noted that the claims do not actually require the screen support details 63 to support a screen.

The applicant's comments concerning Davies failing to disclose a slot which traverses the mullion from a fixed side to a vent side of the master frame are not persuasive because they are not supported by the claim language. Note that claim 9 requires a first cavity, which is integrally moulded in the upper horizontal master frame member, to traverse the mullion. Clearly the upper horizontal master frame member 15 includes a cavity which traverses the mullion as shown in figures 2 and 6.

With respect to the applicant's comments concerning Davies failing to disclose a snap in element in the lower horizontal member of the outer frame, the examiner respectfully disagrees. Claims 12 and 13 do not require a second snap in frame element. Rather, claims 12 and 13 only require the lower horizontal master frame member to include a second sash frame interlacing configuration which is shown by the relationship between the channel 54, 55, 56 and the projection 23. Claims 12 and 13 also require a second vertical clearance which is clearly shown by the spacing between the channel 54, 55, 56 and the projection 23.

With respect to the applicant's comments concerning Davies failing to disclose a glider element adapted to take up vertical clearance between the horizontal members, the examiner respectfully disagrees. Davies, as shown in figure 3, clearly discloses a glider element 74, 75 which takes up a vertical clearance shown as the space between elements 54 and 24. Additionally, when the glider element is attached to the lower

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horizontal sash frame member it is also attached to the upper horizontal sash frame member via the sash frame member rails.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
July 19, 2007